IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 13 OF 2006

MR. CARMINIO CAMILO RODRIGUES AND ANR., ...Appellants

Versus

MRS. MARIA EDVIGES IDALINA RODRIGUES ALIAS EDVIGES RODRIGUES AND ANR., ...Respondents

Mr. V. G. P. Dukle, Advocate for the Appellants.

Coram:- N. A. BRITTO, J.

Date:- 6th June, 2006

ORAL ORDER

This is defendants' second appeal arising from R.C.S.No.517/2000/A(New).

2. Heard Shri V. G. P. Dukle, the learned Counsel on behalf of the defendants.

3. The dispute between both the parties is regarding the land surveyed under no. 80/7. According to the plaintiffs, the said land is part of the plaintiffs' property known as 'Chao Moddy', which belonged to Emiliana Dias and in Inventory Proceedings held upon her death, was allotted to the plaintiff no.1 and after its allotment, was registered in the name of the plaintiff no.1 in the Land Registration Office under no. 18396 w.e.f. 25.10.1962 and was bounded on three sides by the property of Communidade of Dramapur and on the fourth side and the southern side, by the property of Caetano Filipe Dias.

4. On the other hand, it was the case of the defendants that the said property was registered under Matriz no. 260 in the name of Piedade Themudo and later his successors, by Gift Deed dated 16.11.1971, had gifted the same to the defendant no.1. The plaintiff with the allegation that in August 1993, there was a talk in the Village that the defendants were trying to sell the suit property surveyed under no. 80/7 on the strength of wrong entry in the Survey Records in the name of defendant no.1, filed the suit for declaration that the property surveyed under no. 80/7, be declared as the property of the plaintiffs and also with a prayer for cancellation of the Survey Record in the name of defendant no.1. Alternatively, the plaintiffs also claimed possession of the said suit property surveyed under no. 80/7.

5. Both the courts below, based on the Certificate of Inscription and Description recorded in the name of the plaintiffs on or about 25.10.1962, have come to the conclusion that the plaintiffs are owners in possession of the disputed property, as part of their property allotted to plaintiff no.1 in the said Inventory Proceedings. In other words, both the Courts below, have rendered a finding that the plaintiffs are the owners in possession of the disputed property as part of their property known as 'Chao moddy', surveyed under different survey numbers including survey no. 80/7. The learned first Appellate Court, in coming to the said conclusion had also referred to an unreported decision of this Court dated 09.02.1998 in the case of Silvestre Mascarenhas & Ors. v. Smt. Shantu Locmu Fotto Dessai & Ors., wherein this Court had observed that the inscription in the registration of a title conveying ownership irrespective of other formalities, operates as a transfer of possession of such property in favour of the person in whose name the inscription stood. Admittedly, the property 'Chao moddy', with the given boundaries, after its allotment in favour of the plaintiffs, was inscribed and described in the name of the plaintiff w.e.f. 25.10.1962 and, therefore, the said Certificate of Inscription and Description was rightly taken by both the Courts below as proof of ownership and possession in respect of the said entire property of the plaintiffs. However, Shri Dukle, the learned Counsel on behalf of the

defendants submit that the said inscription in favour of plaintiff no.1 was only provisional and was not made definitive. However, learned Advocate Shri Dukle has not been able to throw any light as regards the provisions of law how a provisional registration is made definite registration. The plaintiff filed the suit on or about 03.09.1993 and the name of plaintiff no.1 was entered in the Land Registration Office in respect of the said property from 25.10.1962. In the absence of any other documents of equal weight, in my opinion, even a provisional registration in the name of the plaintiffs for such a long period ought to carry the same legal effect that the plaintiff was the owner in possession of the said property of which the plaintiffs' name was recorded provisionally in the Land Registration Certificate and, therefore, the concurrent finding given by both the Courts could not be disturbed on that count.

6. Learned Advocate Shri Dukle submits that in the written arguments filed by the plaintiffs at the stage of temporary injunction on behalf of the plaintiff, it was stated that the plaintiffs had taken an objection to the name of defendant no.1 being recorded in the Survey Records in the year 1974 and, therefore, no relief of declaration could have been granted in favour of the plaintiffs. However, the fact remains that the defendants failed to secure admission from the plaintiffs to the effect that they had filed any such objections. Moreover, such a point was not raised on behalf of the defendants either before the trial Court or for that matter before the First Appellate Court and therefore, in my view, could not be raised for the first time in this second appeal as a substantial question of law.

7. Shri Dukle has submitted that P.w.2 had not produced the Power of Attorney and, therefore, his evidence could not have been relied upon. Here again, such a point was not raised before the First Appellate Court and, therefore, cannot be raised for the first time before this Court as a substantial question of law. Shri Dukle submits that such a point was raised in the written arguments filed by the defendants, and, if that is the case, the remedy of the defendants was by way of filing to review of the

Judgment of the First Appellate Court. Suffice it to observe that the point which was not taken before the First Appellate Court and which does not go to the root of the matter, cannot be taken for the first time before this Court in the Second Appeal as a substantial question of law.

8. I have perusded the substantial questions of law formulated by the defendants in the Memorandum of Appeal and, in my view and in the light of concurrent findings given by both the Courts below, none of the formulated questions do arise in the Second Appeal as substantial questions of law.

9. In my view, there is no merit in this Second Appeal. Consequently, the same is hereby dismissed in limine.

N. A. BRITTO, J.

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